Technicolor Government Services, Inc. *and* Motion Picture Laboratory Technicians, Local 780, and International Photographers of the Motion Picture Industries, Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO. Case 18-CA-8088

24 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 15 August 1983 Administrative Law Judge Mary Ellen R. Benard issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Technicolor Government Services, Inc., Sioux Falls, South Dakota, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

"(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with Motion Picture Technicians, Local 780, and International Photographers of the Motion Picture Industries, Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, as the exclusive representative of our employees in the following unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time employees employed in the photographic laboratory, product inspection, data management, technical engineering photographic laboratory maintenance, center services and logistics sections, including plant clericals, employed at our Sioux Falls, South Dakota facility; excluding employees employed in user services operations, systems development, systems software, technical engineering computer maintenance, technical communications, applications, training and assistance and data analysis sections, office clerical employees, confidential employees, guards, assistant supervisors and supervisors as defined in the Act.

WE WILL NOT transfer work from employees in the custom laboratory who are in the bargaining unit described above and represented by the Union to other employees who are not in the unit and not

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) by transferring work from employees in the bargaining unit to employees outside the bargaining unit without notifying the Union or giving the Union an opportunity to bargain, Chairman Dotson and Member Hunter note that the Respondent did not contend that its decision to transfer the work was not a mandatory subject of bargaining within Sec. 8(d) of the Act.

[2] The judge included a broad cease-and-desist provision in her recommended Order, after concluding that the Respondent has a proclivity to violate the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). She noted two previous Board decisions finding unfair labor practices by the Respondent: 253 NLRB 569 (1980) and 262 NLRB 1141 (1982). She did not rely on an administrative law judge's decision in another case which the Board adopted subsequent to her decision in this case. 268 NLRB 258 (1983). We have considered the unfair labor practices committed by the Respondent in the previous cases but we do not find that those violations, either considered alone or in conjunction with this case, were sufficiently egregious or pervasive as to meet the test of *Hickmott Foods*. We have therefore modified the judge's recommended Order to include a narrow cease-and-desist provision.

represented by the Union, or change any other terms or conditions of employment of employees in the above-described unit without first notifying the Union and affording it an opportunity to bargain about such things.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make employees whole, with interest, for any losses they may have suffered as a result of our transfer of work from employees in the custom laboratory to unrepresented employees.

WE WILL, on request, bargain with the Union with respect to the wages, hours, and other terms and conditions of employment of the employees in the unit set forth above.

TECHNICOLOR GOVERNMENT SERVICES, INC.

DECISION

STATEMENT OF THE CASE

MARY ELLEN R. BENARD, Administrative Law Judge. The charge in this case was filed February 28, 1983, by Motion Picture Laboratory Technicians, Local 780, and International Photographers of the Motion Picture Industries, Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL–CIO (jointly the Union) against Technicolor Government Services, Inc. (Respondent). On March 29, 1983, the complaint issued alleging, in substance, that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by transferring certain work previously performed by employees who are represented by the Union to other employees who are not so represented without notifying the Union or affording it an opportunity to bargain about the matter. Respondent has denied the commission of any unfair labor practices.

A hearing was held before me at Sioux Falls, South Dakota, on June 9, 1983. Following the hearing the General Counsel filed a brief, which has been considered.

On the entire record in the case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation with an office and place of business in Sioux Falls, South Dakota, where it is engaged in the operation of providing technical support for the Earth Resources Observation System (EROS) Data Center, which processes landsat satellite data and reproduces copies of this data and aerial photographs for Federal agencies, foreign countries, and the general public. During the calendar year ending December 31, 1982, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $1 million from and for providing services to the United States Government. During that same calendar year Respondent sold and shipped from its Sioux Falls, South Dakota facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of South Dakota, and purchased and received at that same facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of South Dakota. The answer admits and I find that Respondent is now and has been at all material times an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and I further find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Background*

Respondent has a contract with the United States Geological Survey to perform the technical support work at the EROS Data Center. The Center receives data from various satellites and aircraft in the form of imagery which it archives, reproduces, and distributes. In addition to the technical and professional personnel who are responsible for archiving and reproducing the imagery, Respondent employs professionals in agriculture, geology, hydrology, agronomy, and related fields who develop techniques for use of the data collected by the Center in the management of resources.

In October 1978, following a Board-conducted election, the Union was certified as representative of Respondent's employees in the following bargaining unit:

> All full-time and regular part-time employees employed in the photographic laboratory, product inspection, data management, technical engineering photographic laboratory maintenance, center services and logistics sections, including plant clericals, employed at the Respondent's Sioux Falls, South Dakota facility; excluding employees employed in user services operations, systems development, systems software, technical engineering computer maintenance, technical communications, applications, training and assistance and data analysis sections, office clerical employees, confidential employees, guards, assistant supervisors and supervisors as defined in the Act.

About 65 of the approximately 225 individuals employed by Respondent at the EROS Center are included in the bargaining unit, and Respondent has adhered to the position, expressed both in the original representation pro-

ceeding and in various unfair labor practice cases discussed below, that the certified unit is inappropriate.[1]

In *Technicolor Graphic Services, Inc., South Dakota Operations*, 253 NLRB 569 (1980), the Board adopted an administrative law judge's conclusions that Respondent[2] violated Section 8(a)(5) and (1) of the Act by abolishing a quality control unit to which bargaining unit employees had been assigned and by unilaterally increasing the wages and changing the working conditions of two bargaining unit employees, all without bargaining with the Union.

In 1982 the Board issued *Technicolor Graphic Services*, 262 NLRB 1141, affirming another administrative law judge's findings that Respondent had violated Section 8(a)(1) of the Act by suspending six employees for writing a letter to the director of the United States Geological Survey alleging that Respondent had discriminated against certain bargaining unit employees with respect to when they would be permitted to have a Christmas party and what would be served at the party and with respect to leaving work early on New Year's Eve. The administrative law judge also found, and the Board agreed, that Respondent further violated Section 8(a)(1) by maintaining, interpreting, and enforcing a work rule so as to preclude employees from exercising their rights to protest working conditions without first exhausting internal company procedures, by warning bargaining unit employees that they were subject to disciplinary action for protesting working conditions, and by threatening to withhold a wage increase from one of the suspended employees.

Finally, on May 5, 1983, Administrative Law Judge Richard L. Denison issued a decision in *Technicolor Government Services, Inc., South Dakota Operations*, Case 18–CA–7638, in which he found that Respondent violated Section 8(a)(5) and (1) of the Act by changing the wages, working conditions, and other terms and conditions of employment of leadpersons, who are bargaining unit employees, without prior notice to and consultation with the Union. That case is now pending before the Board on exceptions.

B. *The Transfer of Bargaining Unit Work*

1. The work in question

The employees in Respondent's photography laboratory (which is also referred to in the record as the production lab) and custom laboratory are included in the bargaining unit. The approximately eight employees who work in the custom lab, which is administratively a subdivision of the photography laboratory, perform more specialized and technical photographic work than that performed in the larger production lab. Until October 21, 1982,[3] some of the employees in the custom laboratory, in addition to reproducing imagery generated by aircraft or satellites, were routinely assigned to perform photography work for the EROS Center's Public Affairs Office. These assignments required the custom laboratory employees to take photographs of such events as award ceremonies or visits to the Center of political figures or foreign dignitaries, as well as identification photographs of employees or photographs for internal use of new equipment, and to develop the film and make reproductions in whatever form the Public Affairs Office requested.

Employee Richard Weiss, who works in the custom laboratory and is representative of the employees there,[4] testified that he and custom laboratory employees Bill Winn and Max Borchardt all performed Public Affairs Office photography, that this work was performed by custom laboratory employees prior to October at least two or three times a week, that he spent at least 8 hours per week performing this work on the average, and that Winn and Borchardt spent collectively at least 10 to 12 hours per week on this work. I credit Weiss, who seemed to testify candidly and to exhibit good recollection.[5]

In addition to taking photographs at the request of the Public Affairs Office, the custom laboratory employees also selected the equipment they would need to take the pictures and develop the film and made whatever reproductions, black and white photographs, color photographs, slides, or whatever, the Public Affairs Office required.

Weiss also credibly testified that, although only three custom laboratory employees performed Public Affairs Office work, the time they spent in doing this work resulted in all of the custom laboratory employees sometimes having to work overtime in order to finish their regular assignments. Weiss further credibly testified that

[1] Although it is clear that Respondent has consistently maintained this position, the basis for the contention is not established by this record. At the hearing, I reserved exhibit numbers to Respondent for the original Decision and Direction of Election in the underlying representation proceeding, Case 18-RC-11921, and Respondent's requests to the Board for review of that decision, and of the Regional Director's subsequent decision certifying the Union, but these exhibits were not supplied and I therefore do not know what contentions Respondent made in that proceeding.

[2] At some point which is not clear from this record, Respondent's name changed from Technicolor Graphic Services, Inc., South Dakota Operations, to Technicolor Government Services, Inc.

[3] All dates hereinafter are the last 6 months of 1982 or the first 6 months of 1983, unless otherwise indicated.

[4] The employee representative performs essentially the same functions as a union steward.

[5] Respondent introduced into evidence a summary of Public Affairs Office work orders which indicates that from January through October 1982 a total of 98.75 hours was spent by custom laboratory employees doing Public Affairs Office photography work. However, after counsel for the General Counsel and representatives of the Union examined the work orders on which the summary was based, the parties stipulated that the summary was not complete, and that certain corrections should be made to it. These corrections indicate that the work orders show 17 more hours than are reflected in the summary. In addition, Weiss credibly testified that he did not always receive a work order when given an assignment to do Public Affairs Office work and that even when a form was completed for such an assignment the amount of time spent on it was sometimes greater than what was listed on the form. Thus, for example, Weiss credibly testified that as to one job, although the work order stated that the assignment took a total of 3 hours, in fact, 3 hours were spent by each of the two employees who worked on the job. Similarly, Weiss credibly testified that on another occasion the photography shooting session required the 6 hours listed on the work order but that no form was completed to show the amount of time spent in making duplicate transparencies the next day. I conclude that Weiss' testimony more accurately reflects the amount of time spent by custom laboratory employees doing Public Affairs Office work than the exhibit introduced by Respondent.

doing the Public Affairs Office work gave the custom laboratory employees the opportunity to leave their usual worksite and have contacts with other people at the Data Center, enabled them to use cameras and other photographic equipment that they would not otherwise have an opportunity to use, and, finally, gave those employees who did the work the aesthetic satisfaction of making original imagery, instead of reproducing imagery generated elsewhere.

2. The reassignment of the Public Affairs Office work

It is undisputed that in late October 1982 Respondent decided to have all Public Affairs Office photography work performed by employees in Respondent's Technical Communications Section, that those employees are not in the bargaining unit and are not represented by the Union, and that this action was taken without notifying the Union or offering it an opportunity to bargain about the matter. Andrew Younger, the union business manager who conducted the original organizing campaign among Respondent's employees and who has apparently remained their primary contact with the Union, credibly testified that he first heard of the transfer of Public Affairs Office photography work from custom lab employees in mid-February 1983, when Steve Ballard, chairman of the elected employee committee at the facility, told Younger that he had heard that the work had been taken out of the bargaining unit. Younger further credibly testified that he telephoned Bud Lockwood, one of Respondent's vice presidents at the Sioux Falls facility, and asked him if it was true that some work had been transferred. Lockwood responded that it "may be," and when Younger accused him of making a unilateral change in the unit employees' terms and conditions of employment, responded that what Respondent had done was lawful. Younger then attempted unsuccessfully to contact Respondent's attorney and, subsequently, on February 28, filed the instant charge.

On March 14, Respondent's vice president and general manager at the EROS Center, Joseph Pfliger, wrote to the Board agent investigating the charge as follows:

> Dear Mr. Bigger:
>
> Sometime ago, at the suggestion of the Government monitors, Technicolor Government Services, Inc., made a change in its methods of operation to achieve a more reasonable cost-effective procedure to handle one of its support functions.
>
> TGS is required to support the EROS Data Center by taking Public Affairs Office (PAO) type photography, both color and black and white, at such times as any situation arises that creates a need for such photography. These occasions are not predictable with any type of regularity.
>
> The total time involved in this activity has averaged a minimum of two and a maximum of four hours per week. Because this support need is difficult to schedule, when it arose, it required that a Custom Laboratory employee stop his work in progress and take the photographs. On most occasions, this meant delaying work orders in progress to obtain the PAO photography.
>
> For such reasons and in the interest of cost efficiency, a decision was made and implemented in late October 1982 to transfer the work to the Technical Communications Section, since the majority of the PAO photography work orders originate or pass through this section. This meant the work could be done by this section without interrupting other work or causing loss time for both Technicolor and the Government. This latter section is not under the bargaining unit.
>
> The changes was [sic] not intended to remove work from the bargaining unit, since the time involved was minimal and it would not result in any reduction in pay or loss of position for the unit. Its sole purpose was to effect a cost savings, at a time when the Government budget for the Center is tight. Local #780 of IATSE has protested this procedure and filed an unfair labor practice. [sic] This is in keeping with their practice of raising technical complaints about minimal matters that in no way hinder their representation of the unit nor deprive the unit of work. However, because of the complaint, which we don't desire to contest, a switchback to the former, less effective, costly procedure will be made on a permanent basis (see attachment).

Attached to the letter was a memo from Pfliger to the supervisors of the photographic laboratory and the technical communications section which was dated March 14 and stated as follows:

> Effective this date, it is requested that all work orders for PAO photography be coordinated with the Photo Lab. The PAO Photographer is to be assigned from the Photo Lab instead of Technicolor Communications.

It is undisputed that the cameras and other equipment used for taking photographs for the Public Affairs Office were kept in the custom laboratory until the end of October and that they were then moved to the technical communications section. It is also undisputed that that equipment had not, at least as of the time of the instant hearing, been returned to the custom laboratory.

Weiss credibly testified that he had only performed one assignment for the Public Affairs Office after the end of October, and that that assignment was in February. Weiss also credibly testified that he observed an employee of the photographic production laboratory doing some Public Affairs Office work about March 14; as noted above, the photographic production laboratory is included in the bargaining unit. The summary of Public Affairs Office work orders in evidence, as corrected, shows 18 work orders from March 23 through May 27; all but two of those were performed by either Borchardt or Winn, both custom laboratory employees, and the others were performed by Denny Pearson, a bargaining unit employee in the photographic production laboratory. Weiss also credibly testified that his hourly rate is $7.83; it is undisputed that the senior custom laboratory

specialists earn $9.62 an hour, the senior photography lab specialists earn $7.82 an hour, and the hourly rate for technical communications employees is $8.69 an hour.

C. *Analysis and Conclusions*

The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally transferring the Public Affairs Office photography work previously performed by employees in the custom laboratory who were represented by the Union to other employees who are not represented by the Union.[6] Respondent did not file a brief; however, at the hearing Respondent moved to dismiss the complaint, contending that if there were an unfair labor practice it was inadvertent, that any action taken by Respondent was required by the Federal Government with which it had contracted, and that, when the Union's complaint about this action was called to the attention of Respondent officials, they corrected it. Further, Respondent contends that as of the time of the hearing the work was being done by bargaining unit employees, although not necessarily by the same bargaining unit employees who had performed it prior to the end of October 1982.

It is well established that an employer violates Section 8(a)(5) and (1) of the Act by reassigning work from employees represented by a labor organization to unrepresented employees without affording notice or an opportunity to bargain to the collective-bargaining representative.[7] As discussed above, it is undisputed that the work of performing Public Affairs Office photography was transferred from custom laboratory employees represented by the Union to unrepresented employees in the Technical Communications Section. Although Respondent contends that this change was made "at the request of the government monitors," the only evidence of such a request is contained in the letter from Pfliger to the Board agent, quoted above, in which Pfliger stated that the change was made "at the suggestion of the Government Monitors," but this letter is of course a self-serving statement made by Pfliger after the charge was filed. There is no other evidence of such a request, and, in any event, even if such a request had been made, Respondent cites no cases, and I am unaware of any authority, for the proposition that a "request," alone, would justify Respondent's refusal to bargain about the matter. With respect to the contention that the change resulted in a cost savings, Respondent submitted no evidence in support of this assertion other than, again, the self-serving letter from Pfliger referred to above, and I do not credit it.

Respondent further argues that the change was at most de minimis. However, as discussed above, I have credited Weiss' unrebutted testimony that performance of Public Affairs Office photography work by custom laboratory employees resulted in all the employees in that section having more overtime work made available to them. Further, it is undisputed that performing Public Affairs Office photography work provided some change from the normal routine of the custom laboratory employees who were assigned this work and that Weiss, at least, derived some satisfaction from having the opportunity to perform this work. I therefore find no merit to Respondent's argument that the change was in any event de minimis.

Finally, Respondent contends that as soon as it was aware that the reassignment of this work to the Technical Communication Section employees had caused some difficulty, it reassigned the work back to bargaining unit employees. Nonetheless, for a period of approximately 5 months the custom laboratory employees did not have an opportunity to perform this work and suffered some financial loss because of it. Further, I have found Respondent's exhibit a less than reliable reflection of the amount of Public Affairs Office photography work that was performed, and I also find Pfliger, who testified that he instructed the supervisor in the photography lab that if no one from the custom lab was available to do the work it should be done by someone from the photography lab, a less than reliable witness. Accordingly, I find no merit to Respondent's contention that the complaint should be dismissed because the work was returned to the bargaining unit.

In view of all the circumstances of the case, therefore, I find that by transferring the work of performing Public Affairs Office photography from employees in the custom laboratory represented by the Union to unrepresented employees in the Technical Communications Section, Respondent violated Section 8(a)(5) and (1) of the Act.

On the basis of the above findings of fact and the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Technicolor Government Services, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Motion Picture Laboratory Technicians, Local 780, and International Photographers of the Motion Picture Industries, Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees employed in the photographic laboratory, product inspection, data management, technical engineering photographic laboratory maintenance, center services and logistics sections, including plant clericals, employed at the Respondent's Sioux Falls, South Dakota, facility; excluding employees employed in user services operations, systems development, systems software, technical engineering computer maintenance, technical communications, applications, training and assistance and data analysis sec-

[6] Respondent's answer denies, inter alia, that the certified unit is appropriate. As noted above, Respondent has consistently adhered to this position, which has repeatedly been rejected by the Board. As noted in previous decisions involving Respondent, absent newly discovered or previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Sec. 8(a)(5) of the Act is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). In the instant case, as in the previous ones, Respondent has not attempted to introduce any evidence on the issue. I therefore find the unit described above is appropriate.

[7] *Newspaper Printing Corp.*, 250 NLRB 1144, 1148–1149 (1980).

tions, office clerical employees, confidential employees, guards, assistant supervisors and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since October 27, 1978, the Union has been the representative for purposes of collective bargaining of the employees in the unit described above.

5. By unilaterally transferring Public Affairs Office photography work previously performed by employees in the custom laboratory who are represented by the Union to other employees who are not so represented without notification or affording the Union an opportunity to bargain, Respondent has engaged in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action, including the posting of the customary notice, designed to effectuate the purposes of the Act.

Having found that Respondent has unlawfully made unilateral changes in the employees' terms and conditions of employment, I shall recommend that Respondent be ordered to restore the status quo ante by assigning all Public Affairs Office photography work to employees in the custom laboratory, and that Respondent be ordered to cease and desist from implementing unilateral changes in terms and conditions of employment of unit employees without bargaining with the Union which represents them. I shall further recommend that Respondent be ordered to make the custom laboratory employees whole for the overtime opportunities they lost as a result of the reassignment of the Public Affairs Office photography work to unrepresented employees and that the amounts paid to the custom laboratory employees to make them whole include interest, to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[8]

Finally, the General Counsel requests that Respondent be ordered to cease and desist from violating its employees' rights "in any other manner," citing *Hickmott Foods*, 242 NLRB 1357 (1979). In that case, the Board held that it would use a narrow injunctive language ordering respondent to cease and desist from "in any like or related manner" restraining or coercing employees in the exercise of their rights under the Act except in those cases where "a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." The Board has previously found in one case that Respondent has unlawfully refused to bargain with the Union concerning changes in terms and conditions of the employment of represented employees and has found in another case that Respondent unlawfully suspended employees and threatened them that they were denied a raise and with disciplinary action because they engaged in protected activity, and maintained work rules which preclude employees from exercising their rights under the Act. In these circumstances, I find that Respondent has demonstrated a proclivity to violate the Act[9] and I therefore further find that a broad order is warranted in this case.[10] Accordingly, I will recommend that Respondent be ordered to cease and desist from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Technicolor Government Services, Inc., Sioux Falls, South Dakota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Motion Picture Laboratory Technicians, Local 780, and International Photographers of the Motion Picture Industries, Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, as the exclusive representative of its employees in the following unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> All full-time and regular part-time employees employed at the photographic laboratory, product inspection, data management, technical engineering photographic laboratory maintenance, center services and logistics sections, including plant clericals, employed at the Respondent's Sioux Falls, South Dakota, facility; excluding employees employed in user services operations, systems development, systems software, technical engineering computer maintenance, technical communications, applications, training and assistance and data analysis sections, office clerical employees, confidential employees, guards, assistant supervisors and supervisors as defined in the Act.

(b) Transferring work customarily performed by employees in the custom laboratory who are represented by the Union in the unit described above to other employees who are not in that bargaining unit and are not represented by the Union, or changing any other terms or conditions of employment of employees in the above-described unit without first notifying the Union and affording it an opportunity to bargain about such changes.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to

[8] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[9] However, I do not rely on the administrative law judge's decision in Case 18-CA-7638, inasmuch as that case is still pending before the Board.

[10] See *Chicago Magnesium Castings Co.*, 256 NLRB 668 (1981).

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

engage in or refrain from engaging in any or all of the activities specified in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Make unit employees whole for any losses they may have suffered as a result of Respondent's unlawful unilateral action, including interest thereon, computed in the manner set forth in the section of this decision entitled "The Remedy."

(b) On request, bargain with the Union with respect to the wages, hours, and other terms and conditions of employment of the employees in the unit set forth above.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Sioux Falls, South Dakota facility copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing, within 20 days from the date of this Order what steps Respondent has taken to comply.

[12] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."